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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73 571

JERRY EUGENE GRAVITT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TABLE OF CONTENTS

Reference to Official Report 1

Grounds for Jurisdiction 1

Questions Presented 2

Constitutional Provisions and Statutes Involved 3

Statement of the Case 3

Reasons for Granting the Writ 5

Question One 7

Question Two 10

Conclusion 11

Certificate of Service 12

Appendix—Opinion of The United States Court of Appeals, Fifth Circuit A1

Table of Authorities

CASES

Alamedia-Sanchez v. *United States*, ... U.S. ..... (37 L.Ed.2d 596) 6, 7

Cady v. *Dombrowski*, ... U.S. ..... (37 L.Ed.2d 706) 5, 7, 9

Carroll v. *United States*, 267 U.S. 132 ..... 5, 7, 8

Chambers v. *Maroney*, 399 U.S. 42 ..... 7, 8

Coolidge v. *New Hampshire*, 403 U.S. 443 ..... 8, 9

Opper v. *United States*, 348 U.S. 84 10

Smith v. *United States*, 348 U.S. 147 ..... 6, 10

United States v. *Boyd*, 5 Cir. 1971, 436 F.2d 1203 8

United States v. *Brouelette*, 5 Cir. 1973, 478 F.2d 1171 11

United States v. *Hull*, 5 Cir. 1971, 437 F.2d 1 8

United States v. *Lipscomb*, 5 Cir. 1971, 435 F.2d 795 8
United States v. *Rosenberg*, 5 Cir. 1972, 458 F.2d 1183 .. 7-8
Wong Sun v. *United States*, 371 U.S. 471 10

CONSTITUTIONAL PROVISION

Fourth Amendment, Constitution of the United States 3, 5, 6

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(a)

REFERENCE TO OFFICIAL REPORT

The opinion of the United States Court of Appeals for the Fifth Circuit in this case is not yet officially reported. A copy of the official opinion in this case is appended hereto. It was decided August 30, 1973.

(b)

GROUNDS FOR JURISDICTION

The opinion sought to be reviewed, *United States of America* v. *Jerry Eugene Gravitt,* No. 72-3163, United States Court of Appeals for the Fifth Circuit, is dated August 30, 1973.

The jurisdiction of this Court is invoked under 28 USC 1254(1), and this petition is filed within the time provided for in Rule 22(2) of the Revised Rules of the Supreme Court of the United States.

Presented here is a question concerning the search of a motor vehicle which was unlawfully impounded by law enforcement officers and a question concerning the necessity for the corroboration of a confession. With regard to the latter question, the issue is presented as to whether a confession of a federal offense must be corroborated as to the element of the offense upon which federal jurisdiction depends. Jurisdiction of this Court is invoked because the court below has decided these important questions of gravity, and importance in the administration of criminal justice contrary to the decision of this Court and has refused to follow the precedents of this Court in deciding those issues. The decision below in this case is in conflict on substantial issues with decisions, not only of this Court, but with those of other Circuit Courts of Appeal. Thus, the law on these issues as announced in this case differs from that applied in other Circuits.

In its rulings, the Fifth Circuit has so far departed from the accepted and prescribed course of judicial proceedings, so as to require the exercise of this Court's power of supervision to correct the errors inherent in its decision.

(c)

QUESTIONS PRESENTED

1.

May law enforcement officers take into custody a non-offending, unrelated motor vehicle, legally and safely parked and locked, without warrant or probable cause

under the guise of "protective custody", search the same and use the fruits of the search as evidence against the accused owner upon his trial for criminal offenses, consistent with the protections of the Fourth Amendment to the Constitution of the United States?

2.

Where one is charged with a federal offense specifically dependent upon proof of interstate travel, insofar as that element of the offense is concerned, is it necessary that his confession be corroborated, or may this essential ingredient of the offense be sufficiently supplied by the accused's uncorroborated confession?

(d)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fourth Amendment to the Constitution of the United States:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

(e)

STATEMENT OF THE CASE

Petitioner was indicted, tried and convicted on three counts of transporting firearms and ammunition in inter-

state commerce, in violation of 18 USC 922(g)(1)-(2). Many of the relevant facts are stated in the opinion of the Fifth Circuit which is contained in the Appendix to this petition and they will not be unnecessarily repeated here. For present purposes we think it sufficient to relate that Petitioner was arrested by City Police in Panama City, Florida, who had confirmed that he was a fugitive and that armed robbery warrants were outstanding against him in the State of Georgia. At the time of his arrest he had a .38 caliber revolver and six bullets on his person.

The arrest took place in the parking lot of a night club. Petitioner was taken to jail with others who were arrested with him. He had previously registered in a room at The Tradewinds Motel in Panama City Beach where he had paid his room rent for three days in advance. At the police station a search of those arrested disclosed a key to the motel room Petitioner had rented and a set of automobile keys. The arresting officers, or some of them, went to the motel without a warrant and searched the motel room. They then located Petitioner's automobile, a 1965 Buick, in the parking lot of the motel. The keys discovered during the search of those arrested fit the automobile. Still without a warrant, the officers took custody of the automobile and drove it to the police station where they conducted a thorough search of the same and discovered the firearms and ammunition which became the subject of the indictment. They testified that in taking custody of the vehicle and in searching its contents, they followed standard police procedures designed to safeguard the property of arrested persons.

It is to be emphasized that at the time of the arrests, those arrested had another vehicle parked in the parking lot of the night club. The motel where Petitioner's automobile was parked was at a location remote from the place

of the arrests and no showing was made to establish any necessity for or probable cause for seizing or taking Petitioner's automobile into custody for protection or otherwise.

The following day Petitioner was questioned by federal officers at the county jail. During the interview, Petitioner confessed that the offending weapons and ammunition found in his automobile had been acquired by him in Georgia and had been transported by him to Florida. While the other evidence may be said to corroborate Petitioner's confession with regard to substantial portions thereof, there was no corroboration of the same with regard to the interstate transportation of the firearms and ammunition.

REASONS FOR GRANTING THE WRIT

There can be no question but that a motor vehicle has a different status from that of a dwelling house with reference to Fourth Amendment issues. Since *Carroll* v. *United States,* 267 U.S. 132, this distinction has been readily made. During the current Term of this Court decisions have been rendered relating to the permissible limits of warrantless searches of motor vehicles. Perhaps most significant of these is *Cady* v. *Dombrowski,* ..... U.S. ..... (37 L.Ed.2d 706). In that case, this Court was dealing with a "custodial search" of a motor vehicle. However, this Court has never gone so far as to validate a search of a vehicle under circumstances even remotely akin to those present here. It is obvious from its opinion, seven pages of which are devoted to justifying the search in question, the Fifth Circuit had difficulty in approving the search. Even so, it recognized the "dangers inherent in recognizing a police power to undertake custodial seizures and inventory searches."

This Court has steadfastly and unwaveringly protected the Fourth Amendment right of persons to be secure in their effects, including motor vehicles, and to be protected from unreasonable searches. It has reaffirmed this Term that probable cause is a minimum requirement for a reasonable search of a vehicle as permitted by the Constitution. *Alamedia-Sanchez* v. *United States,* ..... U.S. ..... (37 L.Ed.2d 596). By its opinion in the present case, the Fifth Circuit has overlooked the safeguards of the Fourth Amendment and has opened Pandora's box to emit the express abuse which the Fourth Amendment prohibits. Here, the court below seems to hold that the "standard operating procedure" of a local police force may rightfully override the protections of the Fourth Amendment.

Aside from the search and seizure question, this Court should grant certiorari so as to define for guidance, the corroboration of a confession necessary under the federal system of the administration of justice. Is it necessary that corroboration of the essential ingredient of the offense, the ingredient which denominates the offense as a federal, as opposed to a State offense, be evident, or might one be convicted where proof of such ingredient is supplied only by his confession? In *Smith* v. *United States,* 348 U.S. 147, this Court held that an accused may not be convicted on his own corroborated confession. We submit that this principle contemplates that the essential element vital to the prosecution's case, as applicable here, the interstate transportation, be established by evidence aliunde or corroborative of the accused's confession. Only such a rule will afford an accused the protection secured and intended by the principle, that is, prevention of errors in convictions based upon untrue confessions alone.

Question One

It would serve no useful purpose to trace the evolution of the law relating to motor vehicle searches from *Carroll* v. *United States,* 267 U.S. 132, and its progenitors to *Cady* v. *Dombrowski,* ..... U.S. ..... (37 L.Ed.2d 706), nor to predict the evils and excesses which might follow if the present judgment be allowed to stand. It is noteworthy that *Carroll* and similar cases were concerned with the fugitive nature of a motor vehicle which dictated application of a distinctive rule of law. Such cases were rightly concerned with the mobility of a vehicle which rendered it impracticable to secure a warrant "because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

The situation here has no similarity to *Carroll* and those cases related to the doctrine applicable in instances where there is probable cause to justify a search of a moving vehicle or one which may readily be moved. In fact, there is no contention and can be none that the officers had probable cause to search Petitioner's vehicle. There was no grave emergency or exigent circumstances and it could not be successfully contended that the search and seizure were incident to the arrests, being, as they were, remote both in time and place to the arrests. Likewise, *Chambers* v. *Maroney,* 399 U.S. 42, has no application, since Petitioner's vehicle was in no way related to a known offense or occupied, used or otherwise connected with the arrests. In short, no claim is made by the United States, nor could one be, that the search of Petitioner's vehicle was constitutional under any previous decision of this Court. See *Alamedia-Sanchez* v. *United States,* supra.

In affirming the ruling of the trial court, the Fifth Circuit relied upon three of its earlier decisions, *United*

States v. *Rosenberg*, 5 Cir. 1972, 458 F.2d 1183; *United States* v. *Boyd*, 5 Cir. 1971, 436 F.2d 1203; and *United States* v. *Lipscomb*, 5 Cir. 1971, 435 F.2d 795. In doing so, it overlooked another of its cases of the same vintage, *United States* v. *Hull*, 5 Cir. 1971, 437 F.2d 1, where it reached a contrary conclusion. The only one of these cases which even remotely resembles the present case is the first cited, *United States* v. *Rosenberg*, supra (erroneously cited in the opinion as 448 F.2d, instead of 458 F.2d). However, even if correctly decided, it is readily distinguishable from the present case. The seized automobile in *Rosenberg* was at least at the place of the arrest. The contention urged there was that the arrest was unlawful; thus, the search of the accused person which located the car keys and resulted in the seizure of the car and search of it was, therefore, unlawful. Be that as it may, the case, decided by the same Circuit, is hardly imposing authority here.

This Court has twice dealt with the question presented here. In *Coolidge* v. *New Hampshire*, 403 U.S. 443, the police seized an automobile which was lawfully and safely parked outside the defendant's home. While the vehicle was seized under an invalid warrant, the State sought to justify the seizure under three exceptions to the warrant requirements—as incident to the arrest; under the *Carroll*, *Chambers* doctrines; and under the plain-view doctrine. This Court rejected all three arguments. In so ruling, the Court reiterated the basic constitutional rule that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-defined exceptions."

While *Coolidge* did not directly discuss the question of whether a vehicle in the lawful custody of officers might be searched, since the acquisition of the vehicle by the

officers was held to be unlawful, its teachings point out the delicate balance between official right to seize and search and the protections afforded by the Fourth Amendment. Also interesting and significant here, is the fact that the seizure in *Coolidge* was a warrantless seizure of an automobile which was lawfully and safely parked outside the defendant's home. Compare with the facts here where Petitioner's automobile was lawfully and safely parked and locked in the parking lot of his motel where his rent was prepaid. Furthermore, in *Coolidge* perhaps there was some probable cause for the seizure, where, as here, there was none.

The ultimate standard set forth in the Fourth Amendment is reasonableness. In *Cady* v. *Dombrowski*, supra, the police had lawfully exercised a form of custody or control over Dombrowski's automobile because it was disabled as a result of an accident and constituted a traffic nuisance. There were additional exigent circumstances and just reason to search the vehicle for a missing revolver. Under the facts of that case this Court held the search to have been reasonable. In short, the Court held that there is no absolute standard or formula as to reasonableness in a given situation, but that unreasonableness within the meaning of the Amendment depends upon the facts and circumstances of each case.

The facts and circumstances of this case disclose an unreasonable search and seizure. There were no facts to justify the impounding of the vehicle at the particular time or the seizure of it for purposes of protective custody. While the Fifth Circuit in footnote 5 of its opinion gratuitously suggests some reasons for such action on the part of the officers, the fact remains that the unoffending vehicle

was lawfully and safely parked and Petitioner had a right to anticipate that his privacy would be secure. The Fourth Amendment promised him this right of privacy.

Question Two

The general rule is that an accused may not be convicted on his own uncorroborated confession. *Smith* v. *United States*, 348 U.S. 147, and cases cited. An uncorroborated admission by an accused does not, standing alone, corroborate an unverified confession. *Wong Sun* v. *United States*, 371 U.S. 471. While a confession need not be corroborated as to every detail, statements of an accused out of court that show *essential elements* of the crime must be corroborated, or supplied by other evidence in order to sustain a conviction. *Opper* v. *United States*, 348 U.S. 84. As stated in *Wong Sun*, "It is a settled principle of the administration of criminal justice in the federal courts that a conviction must rest upon firmer ground than the uncorroborated admission or confession of the accused."

In the present case the only evidence establishing that the offending firearms and ammunition were transported from Georgia to Florida was the confession of Petitioner. The transportation of such materials in interstate commerce was the gravamen of the offense. Do not the principles of law discussed above require corroboration of Petitioner's confession as to this essential element of the offense?

Our search of the authorities has not disclosed a decision direct in point; however, reason and logic can lead to no other conclusion than that contended for here. This conclusion was reached with reference to the affidavit in

support of a search warrant in *United States* v. *Brouelette*, 5 Cir. 1973, 478 F.2d 1171. The affidavit was sufficient to establish criminal activity, but it failed to show a nexus between such activity and interstate commerce. A necessary element of the offense involved was the use of interstate facilities. Therefore, the court held the affidavit insufficient.

As applicable here, the failure of the corroboration of the confession to corroborate the essential elements of the federal offense, the interstate transportation of the firearms and ammunition, renders the evidence insufficient to sustain the conviction.

CONCLUSION

For the reasons submitted, it is respectfully urged that this petition for the writ of certiorari should be granted and that this Court should determine that the court below erred in the respects presented herein.

Respectfully submitted,

ROBERT B. THOMPSON
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned does hereby certify that true copies of the foregoing petition of JERRY EUGENE GRAVITT were deposited in the United States Post Office with air-mail postage prepaid, addressed to the Solicitor General of the United States, Department of Justice, Washington, D. C., and to the Honorable William Stafford, United States Attorney, Post Office Box 1308, Tallahassee, Florida.

This the 26th day of September, 1973.

ROBERT B. THOMPSON

APPENDIX

In The
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-3163

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JERRY EUGENE GRAVITT,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

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(August 30, 1973)

Before WISDOM, DYER and INGRAHAM, Circuit Judges.

WISDOM, Circuit Judge: This case involves the constitutionality of a warrantless search of an automobile. The defendant-appellant, Jerry Gravitt, was convicted on three counts of transporting firearms and ammunition in interstate commerce, in violation of 18 U.S.C. § 922(g),(1)-(2). We affirm.

I.

Jerry Gravitt and his two brothers, Ronnie and Eddie, were arrested outside a lounge in Panama City Beach, Florida, early in the morning on May 15, 1971. The police

briefly searched the men at the time of their arrest, and found six .38-caliber revolver shells in one of the defendant's pockets. At the police station, officers searched them more thoroughly. On Jerry Gravitt they found a .38-caliber Colt revolver in one of his western-style boots. On Ronnie Gravitt they found a set of car keys and a motel key. The room key was to room 125 in the Tradewinds Motel in Panama City Beach.

Immediately after finding these keys, the police officers proceeded to the Tradewinds Motel. At the desk they discovered that the name on the registration card for room 125 corresponded with the name on false identification cards found on the defendant. He and his brothers had checked in on the morning of May 14, and had prepaid rent for three days. After this check at the desk, the officers went to the motel parking lot, where they found a 1965 Buick in the parking space reserved for room 125. Ronnie Gravitt's key fitted this automobile. One of the officers drove the car to the police station. At the station, he and another officer conducted a thorough search of the vehicle. They testified that in taking custody of the car and in searching its contents, they followed standard police procedures designed to safeguard the property of arrested persons.

The search of the Gravitts' car revealed a small arsenal: a bomb, consisting of a quarter of a pound of "Flex-X" military explosive with a piece of nylon cord wrapped around it, and a number 12 blasting cap; a 6-volt heavy duty Rayovac battery capable of detonating the bomb; an M-1 type 30-caliber carbine; a 12-gauge Remington model 11 shotgun loaded with five rounds of "00" buckshot ammunition; and a .45-caliber fully automatic rifle, with a 30-round magazine attached, fully loaded. In addition to the ammunition in the loaded guns, the officers

found ten loose rounds of .45-caliber ammunition, and three loose rounds of 12-gauge "00" buckshot ammunition.

On the afternoon of May 16, a day and a half after Jerry Gravitt's arrest, two agents of the Alcohol, Tobacco, and Firearms Division of the Treasury Department came to the Bay County Jail to question him. During the course of the interview Gravitt confessed to the crimes with which he was later charged. He told the agents that he and his brothers had left Atlanta late in the evening on May 13 and had arrived in Panama City Beach early the next morning, when they checked into the Tradewinds Motel. He said that they had brought with them the weapons found in the car, and related that he had procured all of those weapons while he had been in Georgia. He admitted that he was a fugitive from Georgia, and that he had already served over four years on one robbery conviction. Although there was agreement as to what Gravitt said during the interview, Gravitt and the agents gave conflicting testimony about the circumstances of the confession. The agents testified that they had shown Gravitt a form advising him of his rights to counsel and to remain silent. He stated that he did not need counsel, and that his statements were made freely and voluntarily. Gravitt admitted he had been shown a form advising him of his rights, but contended that he had been induced to make his confession by the agents' promises that they would not prosecute his brothers if he would admit that the guns were his. The agents denied having made these promises.

Jerry and Ronnie Gravitt were indicted on a four-count indictment. Count II of the indictment was quashed.[1] The defendants were convicted on each of the other three

1. That count had charged the defendants with the possession of firearms not registered in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d) (1970).

counts. Count I charged them with interstate transportation of firearms by persons who were fugitives from justice, in violation of 18 U.S.C. § 922(g)(2). Count III charged them with interstate transportation of firearms by persons who had been convicted of crimes punishable by imprisonment for more than one year, in violation of 18 U.S.C. § 922(g)(1).[2] Count IV charged interstate transportation of ammunition by persons who had been convicted of crimes punishable by imprisonment of more than one year, also in violation of § 922(g)(1). The defendants were sentenced to imprisonment of five years on each of the three counts. Their sentences on the first and third counts were to run consecutively; their sentences on the fourth count were to run concurrently. Ronnie Gravitt chose not to appeal his conviction.

Jerry Gravitt asserts three grounds for reversal. First, he contends that the search of his automobile violated the fourth amendment, and that therefore the weapons found during that search should have been excluded from evidence. Second, he urges that his confession was not made voluntarily, and that the agents' testimony about it therefore should also have been excluded. Finally, he

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2. There is an unexplained discrepancy between the list of firearms the indictment sets out under Count I and that it sets out under Count III. Under Count I, the indictment lists as the firearms in question the bomb, the shotgun, the rifle, and the carbine, all of which were found in the car, and adds to the list the revolver found in the appellant's boot during the search at the station. Under Count III, the indictment lists only the firearms found in the car; it makes no mention of the revolver. We do not perceive any reason for this discrepancy. Certainly the interstate transportation of the revolver would seem to be as much a violation of subsection (g)(1) as it is of subsection (g)(2). No reason for the difference appears from anything in the record, and none was adduced in the briefs or on argument on this appeal.

The search of Gravitt's person at the stationhouse was conceded to be valid, presumably as a search incident to an arrest. There was thus no question about the propriety of admitting the revolver into evidence.

argues that a verdict of acquittal should have been directed because the Government did not introduce sufficient evidence apart from the defendant's confession to prove the corpus delicti of the offense.

II.

This Court has consistently recognized that the fourth amendment is not violated when the police take custody of the property of persons they arrest to store that property for safekeeping. *United States v. Rosenberg,* 5 Cir. 1972, 448 F.2d 1183; *United States v. Boyd,* 5 Cir. 1971, 436 F.2d 1203; *United States v. Lipscomb,* 5 Cir. 1971, 435 F.2d 795. In those, and other cases that might be cited, we recognized that when the police take custody of any sort of container—be it an automobile, suitcase, or any other thing in which property may be stored—it is reasonable to search the container to itemize the property to be held by the police. *Boyd,* 436 F.2d at 1185; *Lipscomb,* 435 F.2d at 800-01. These decisions reflect, of course, the underlying principle that the fourth amendment proscribes only *unreasonable* searches. *Lipscomb,* 435 F.2d at 800, citing *Terry v. Ohio,* 1968, 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889, 899. In *Lipscomb,* we articulated the considerations underlying the view that custodial seizures and accompanying inventory searches are reasonable:

> It cannot be denied that to prevent the escape, self-injury, or harm to others, the police have a legitimate interest in separating the accused from the property found in his possession. An inventory is then necessary both to preserve the property of the accused while he is in jail and to forestall the possibility that the accused may later claim that some item has not been returned to him.

435 F.2d at 800.

Our view is in accord with decisions of other circuits. For example, *United States v. Blackburn*, 6 Cir. 1968, 389 F.2d 93; *Cotton v. United States*, 9 Cir. 1967, 371 F.2d 385, 392-93, have joined *Lipscomb* in citing the need to protect the property of the accused as well as to protect the police from ungrounded claims.[3] The American Law Institute's Model Code of Pre-Arraignment Procedure adopts a view substantially in accord with the decisions in this and the other circuits. ALI, Model Code of Pre-Arraignment Procedure § 230.6(3) (Off. Draft No. 1, July 1972).[4]

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3. Cotton having been validly arrested and taken to the police station, the officer would have been derelict in his duty if he had left the car unattended in a dark alley in the middle of the night. The police have as much duty to protect the property of a suspect as they have to protect the property of the rest of us, and that is what they did in this case by towing the car to the police impound. They also had a duty to keep a record of the property that they had impounded so that it could be returned to the suspect or to its owner in due course.

Cotton v. United States, 371 F.2d at 392.

4. The Commentary to this section of the ALI Code states that, "The Supreme Court has not had occasion to confront 'custodial' or 'inventory' search problems as they relate to the arrested individual's person and accoutrements." ALI, Model Code of Pre-Arraignment Procedure, § 230.6, Commentary at 189. We are in basic agreement with this statement, and our reading of the Supreme Court cases convinces us that none clearly controls our decision here. However, the facts of some of them are very similar to the facts before us, and we feel that it is necessary to state explicitly why we believe those cases do not constitute controlling precedent. Four cases need to be noted in this regard.

The first is Preston v. United States, 1964, 376 U.S. 364, 84 S.Ct. 881, 11 L.Ed.2d 777. In that case the police had impounded and searched the car of a man they had arrested on vagrancy charges, claiming they suspected the car might be stolen. In an opinion by Justice Black, a unanimous Supreme Court held the search unconstitutional. The search there might have been defended on grounds similar to those on which we uphold the search in this case, since after the arrest the car apparently was sitting unprotected on an open city street. But the Government did not raise that theory in the case; instead, it relied on the theory that the search was lawful as a search incident to an arrest. The Supreme Court's opinion is devoted entirely to a rejection of that theory. And the Court, in a later opinion, also written by Justice Black, has made it clear that

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In this case, the search of Gravitt's automobile was lawful under the standards announced in *Lipscomb* and applied in *Boyd* and *Rosenberg*. The officers here testified that it was standard operating procedure for them

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Footnote continued—

the *Preston* holding was limited to a ruling that automobile searches of the kind involved there were not permissible as searches incident to an arrest. See Cooper v. California, 1966, 386 U.S. 58, 59-60, 87 S.Ct. 788, 17 L.Ed.2d 730. We conclude, therefore, as the Supreme Court itself apparently did in *Cooper*, that *Preston* does not in any way affect the validity of custodial searches.

Cooper itself is the second of the four cases that need to be noted. In that case the Court, by a 5-4 margin, upheld the search of an automobile seized and searched pursuant to a California statute requiring that the police hold the automobiles in which narcotics were found until a forfeiture proceeding could be held. California law provided for the forfeiture of any automobile in which narcotics were found. The Court upheld the seizure, apparently on the basis of the government interest embodied in the forfeiture statutes, and upheld the search on grounds similar to the grounds on which we rest here:

> The forfeiture of petitioner's car did not take place until over four months after it was lawfully seized. It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it.

386 U.S. at 61-62. *Cooper* of course supports our view here; we do not rely on it squarely because it does not address the question whether custodial purposes justified seizing the car in the first place.

The other two cases are Harris v. United States, 1968, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067, and Coolidge v. New Hampshire, 1971, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564. In *Harris* the police had impounded a car as evidence. A policeman found a registration card, on the metal stripping over which the door closes, when he opened the door to close the windows to protect the car from the rain. The Court did not reach the question of the permissibility of a custodial search or seizure, because it held, in a per curiam opinion, that the officer's act in opening the windows of the car was not a "search". *Coolidge*, among the four, is the case most distant from the one before us. In *Coolidge*, the police seized an automobile which was lawfully and safely parked outside the defendant's home. The State in that case did not even seek to justify the seizure and subsequent search as custodial. It resorted instead to four other grounds, which need not be detailed here. The Court rejected all of those grounds and held the search unconstitutional.

to take the automobile of an accused into custody when doing so was necessary to protect the automobile or its contents while the accused was in custody. There can be little doubt that taking custody of the car was necessary here. The officers had arrested men who were travelling in a strange town and whom the officers expected to turn over to Georgia authorities in a few days. The Florida authorities would be held responsible for all the property these men had with them in Panama City Beach. This expectation gave them added reason to itemize the property in the car. In these circumstances both the seizure of the car and the inventory of its contents were not only constitutionally reasonable but necessary and desirable actions for the police to take.[5]

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5. On oral argument the appellant placed much stress on the fact that the motel rent was prepaid for two days beyond the time of the seizure of the car, and that the car therefore could have remained where it was, in the motel parking lot, for two more days. The argument was that the police did not in fact have to seize the car to protect it, at least not until the time it was entitled to remain where it was had expired. We cannot accept this suggestion. For us, the crucial fact is that the officers had every reason to expect that the detention of the Gravitts would last a good deal longer than two days. Given that fact, it was reasonable for the officers to take the car whenever it was most convenient for them to do so; and presumably it was most convenient immediately following the arrest, when they were at the motel with the car keys. Indeed, the officers' immediate seizure of the car may have been warranted on grounds beyond convenience. There were some dangers involved in allowing the car to sit unattended at the motel for two days, although to be sure the motel management would not have had it towed away during that time. The car might have been stolen or damaged while standing there; or something inside it might have been taken. The officers' action in immediately taking custody of the car appears to have been the prudent thing to do.

The appellant also noted repeatedly on argument that two days was sufficient time for the officers to procure a search warrant. We scarcely need explain why this fact is irrelevant. The government interests which made this search reasonable were, as we have stressed, the police interest in protecting the property of the accused and in protecting themselves. It was not an interest in gathering evidence, such as seizing contraband

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We do not lose sight of the dangers inherent in recognizing a police power to undertake custodial seizures and inventory searches. We recognize, as we did in *Lipscomb* (see 435 F.2d at 801), the possibility that the police might abuse that power by using it as a pretext to excuse themselves after the fact in circumstances where unjustifiedly they had failed to secure a search warrant. But, as in *Lipscomb*, we find little evidence in the case before us to suggest that the search we are examining was pretextual, and we repeat that we are "not willing to say that the possibility of a pretextual search is so great . . . that as a matter of law we must condemn the concept of a station-house inventory of personal property". *Id.* We are conscious, too, of the possibility that the police, in some circumstances warranting some limited form of inventory search, may often conduct searches which range beyond what is required by any legitimate police need. See *Brett v. United States*, 5 Cir. 1970, 412 F.2d 401, 406; ALI, A Model Code of Pre-Arraignment Procedure § 230.6, Commentary at 191. But we are confident that here, as in other contexts, reviewing courts will be fully capable of assuring that the scope of the intrusions involved will be tailored to the specific public interests which lie at the root of the finding that the intrusions are reasonable. Cf. *Adams v. Williams*, 1972, 407 U.S. 143, 92 S.Ct. 1921, L.Ed.2d; *Sibron v. New York*, 1968, 392 U.S. 40, 65, 88 S.Ct. 1889, 1904;

Footnote continued—

or dangerous weapons. That is usually involved when a search is made on the basis of a warrant or on grounds that there exists probable cause combined with exigent circumstances. Where interests of the former kind are involved, it is of course of no consequence whether or not there was probable cause. Where it is irrelevant whether there is probable cause, there is no need for the Government to get a warrant. The warrant requirement is operative only when there is a need to determine probable cause. If no warrant need ever have been obtained, then *a fortiori* the fact that there was time in which to obtain one is irrelevant.

20 L.Ed.2d 917, 936; *Terry v. Ohio*, 1968, 392 U.S. 1, 17-19, 88 S.Ct. 1868, 1878, 20 L.Ed.2d 889, 904; *Warden v. Hayden*, 1967, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782, 784 (Fortas, J., concurring). Admittedly, the thoroughgoing search of the car in this case, during which the officers looked into the trunk and glove compartment and under the seats, was an intrusion of relatively serious magnitude. We might not be prepared to say that whenever the police have to seize a car for safekeeping they will be entitled to search it so thoroughly. But here, as we have pointed out, the police needed to be certain that they had inventoried the contents of the car completely, given that the men they had arrested were far from home and given the fact that the officers had to deliver the men and their property to authorities of another jurisdiction. In these circumstances, we cannot say that even the relatively serious intrusion involved was not tailored to the police needs we have found to have been involved.

III.

The appellant's second and third contentions present few problems.

A. There is no basis for the appellant's contention that his confession was improperly admitted. The trial judge's actions complied in every respect with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 3501 (1970), governing the admissibility of confessions in federal criminal trials. He conducted a hearing out of the presence of the jury to determine the voluntariness of the confession, and he permitted the jury to hear testimony going to the issue of voluntariness.

B. There is also no basis for the appellant's third contention. Gravitt claims that the evidence was insufficient to support the conviction, because the Government failed to prove the *corpus delicti* on the basis of evidence other than the confession. He asserts that there was no evidence other than his confession tending to prove that the firearms in question had ever been in Georgia or that they were transported between states. Therefore, the argument goes, the receipt of the confession into evidence was improper, and the conviction must be reversed.

This argument misstates the law. The requirement is only that there be extrinsic evidence corroborating the confession *as a whole*, which, taken together with the confession, is sufficient to support a finding of guilt beyond a reasonable doubt. *Smith v. United States*, 1954, 348 U.S. 147, 75 S.Ct. 194, 99 L.Ed.2d 192; *United States v. Abigando*, 5 Cir. 1971, 439 F.2d 827. There is no requirement that there be evidence extrinsic to the confession proving every element of the offense,[6] and no requirement that the extrinsic evidence be sufficient to establish the *corpus delicti*.[7] If there is extrinsic evidence tending to corroborate the confession, the confession as a whole is admissible; and some elements of the offense may be proven entirely on the basis of a corroborated confession. See *Smith*, 348 U.S. at 156; *Abigando*, 439 F.2d at 832-33.

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6. Requiring corroboration of a confession does not mean that the Government must introduce independent evidence on ever yelement of the crime. Requirng independent proof of every element would go beyond the purpose of the rule which is intended to establish the reliability of confessions.

United States v. Abigando, 439 F.2d at 832-33.

7. [C]orroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*.

Opper v. United States, 1954, 348 U.S. 84, 93, 75 S.Ct. 158, 164, 99 L.Ed. 101.

We deem it unnecessary to catalogue here *all* of the extrinic evidence corroborating Gravitt's confession, or to detail specific pieces of evidence tending to confirm the truth of the story he gave the officers. There was in the record testimony by the registration clerk at the motel, by two filling station attendants who had serviced Gravitt's car on the morning of May 14, and by the two Panama City Beach police officers, substantiating parts of Gravitt's story. Indeed, virtually every item of extrinsic evidence tended in one way or another to corroborate Gravitt's substantially complete account of the crime. His was an amply corroborated confession. Taken with the other evidence in the record, it could readily support the jury's finding that his guilt was established beyond a reasonable doubt.

AFFIRMED.

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No. 73-571

In the Supreme Court of the United States

OCTOBER TERM, 1973

JERRY EUGENE GRAVITT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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JERRY EUGENE GRAVITT, PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the inventorying of the contents of his car, after it was taken into custody for safekeeping when he was arrested, violated his rights under the Fourth Amendment, and that there was insufficient independent corroboration of his confession.

After a jury trial in the United States District Court for the Northern District of Florida, petitioner was convicted of transporting firearms while a fugitive from justice (count 1), and transporting firearms (count 3) and ammunition (count 4) after having been convicted of a felony,[1] all in violation of 18 U.S.C. 922(g). He was sentenced to consecutive terms of imprisonment

[1] The trial judge dismissed count 2, charging possession of unregistered weapons (Pet. App. A3, n. 1).

for five years on counts 1 and 3, and to a concurrent term of five years' imprisonment on count 4. The court of appeals affirmed (Pet. App.).

The evidence adduced at trial and at hearings on motions to suppress[2] showed that at 1:30 a.m. on May 15, 1971, Sergeant Charles Buckley of the Panama City Beach, Florida, police received information that three men named Gravitt were in a local nightclub and that they were fugitives from Atlanta, Georgia. Sergeant Buckley confirmed by telephone conversation with Atlanta police that warrants were outstanding for the arrest of petitioner and his brother, Ronnie; that they had been charged with armed bank robbery; and that they were considered to be armed and dangerous (Tr. 65-67). Buckley and other local police officers watched the nightclub and arrested petitioner, his brothers Ronnie and William Eddie, and William Eddie's wife as they left shortly before 5 a.m. (Tr. 12, 47).

At the parking lot of the nightclub, the arresting officers conducted a brief search of petitioner's clothing. This search yielded credit cards and a diver's license in the name of Gerald A. Lewis, and six .38 calibre shells (Tr. 12-14, 47). Upon arrival at the police station, petitioner and Ronnie Gravitt were subjected to a more thorough search. A .38 calibre Colt revolver was found in one of petitioner's boots (Tr. 48).[3] Among the items seized from Ronnie Gravitt were automobile

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[2] We are lodging with the Clerk of this Court the one-volume transcript of the trial and hearings conducted during the trial ("Tr.").

[3] The revolver found in petitioner's boot was included among the firearms listed in count 1, but was inadvertently omitted in count 3. All of the items listed in count 3 were in petitioner's car.

keys and a key to a motel room. Sergeant Buckley and Officer Norton went to the motel and found that a person identifying himself as Gerald A. Lewis had registered May 14 and paid for a room for three days. Petitioner's 1965 Buick with Georgia license plates was on the motel lot (Tr. 14). Sergeant Buckley directed Officer Norton to remove the vehicle to the police station, so that it could be inventoried and secured in accordance with customary police procedures for controlling property belonging to persons who have been arrested and are unlikely to be released immediately (Tr. 14-15).

While driving the Buick to the police station on that rainy morning, Officer Norton was required at one point to make a sudden stop to avoid striking a vehicle which had lost control on the wet road. He was struck on the foot by the butt of an M-1 rifle, which had been concealed under the seat until freed by the momentum of the sudden stop (Tr. 58-59). On arrival at the police station, Norton reported the presence of the rifle to Sergeant Buckley, who then examined the interior of the vehicle. He inventoried, but did not remove, other firearms and ammunition found in the vehicle, including the rifle discovered by Officer Norton, a bomb-like destructive device, a six-volt battery that could activate that device, several rounds of ammunition, a loaded shotgun, and a .45 calibre automatic rifle loaded with a magazine containing thirty shells (Tr. 16-18, 51-52).

Sergeant Buckley reported his discovery to the chief of police, who notified federal Alcohol, Tobacco and Firearms agents. After being advised of his rights and indicating that he was aware of his rights and did not want a lawyer present, petitioner admitted to the

agents that he and his brother, Ronnie,[4] had left Atlanta on May 13 and proceeded to a motel in Panama City Beach, where petitioner registered under a fictitious name. Petitioner admitted making the destructive device and owning all of the weapons and ammunition found in the vehicle. He stated that he had purchased those items in various cities in Georgia. Petitioner also acknowledged his awareness of the outstanding warrant for his arrest on the charge of armed robbery and stated that he was on parole when arrested by Sergeant Buckley (Tr. 102-104).

1. The court of appeals properly ruled that no violation of petitioner's Fourth Amendment rights occurred when the city policemen took custody of his automobile and examined its interior, as part of normal police procedure when assuming responsibility for the possessions of those confined in jail. The policemen could readily conclude that, following their arrest as fugitives, petitioner and his brother would not be released within the near future. Upon discovering the existence of a vehicle belonging to the fugitives, located on the premises of a temporary residence such as a motel,[5] the officers had a duty to protect the interests of the owner

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[4] Ronnie Gravitt was tried jointly with petitioner, convicted, and sentenced to probation for five years. No charges arising from this incident were lodged against the other two persons arrested with petitioner.

[5] Petitioner continues to stress the fact that his motel rent had been prepaid for two days after the vehicle was removed from the motel parking lot (Pet. 9). As the court of appeals noted (Pet. App. A8, n. 5), this fact would have prevented the motel management from having the car towed away until after May 17, but it did not affect the reasonableness of the officers' removal on May 15, since they could justifiably assume that petitioner's detention would last much longer than two days.

of the vehicle by removing it to a location beyond public access. See *Chambers* v. *Maroney,* 399 U.S. 42, 52, n. 10; *Cady* v. *Dombrowski,* decided June 21, 1973 (No. 72-586); *Harris* v. *United States,* 390 U.S. 234, 236.

In these circumstances, the accidental discovery of a rifle by Officer Norton as he drove petitioner's car from the motel to the police station cannot fairly be deemed an unlawful search. See *Coolidge* v. *New Hampshire,* 403 U.S. 443, 464-471; *Harris* v. *United States, supra.* Since proof of petitioner's possession of that rifle alone supports the convictions on the two counts upon which he received consecutive sentences, this Court need not, under the concurrent sentence doctrine, examine the propriety of the conduct which led to the discovery of other weapons. See *Barnes* v. *United States,* 412 U.S. 837, 848, n. 16; *Benton* v. *Maryland,* 395 U.S. 784.[6]

Contrary to petitioner's contention (Pet. 8-9), neither *Coolidge* v. *New Hampshire, supra,* nor *Cady* v. *Dombrowski, supra,* support his position that the removal of the Buick from the motel parking lot and the examination of the interior of the vehicle violated his Fourth

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[6] In any event, the ensuing inspection of the car's interior at the police station, for the purpose of inventorying its contents, was "responsible, indeed laudable, police conduct to protect the property of the owner of a lawfully impounded car." *United States* v. *Mitchell,* 458 F. 2d 960, 961 (C.A. 9); *United States* v. *Rosenberg,* 458 F. 2d 1183, 1185 (C.A. 5), certiorari denied, 409 U.S. 868; *United States* v. *Pennington,* 441 F. 2d 249 (C.A. 5), certiorari denied, 404 U.S. 854; *United States* v. *Lipscomb,* 435 F. 2d 795 (C.A. 5), certiorari denied, 401 U.S. 980; *United States* v. *Blackburn,* 389 F. 2d 93 (C.A. 6). Therefore, the discovery of the remaining weapons, ammunition, and the destructive device forming the subject matter of the counts upon which petitioner was convicted was not the result of an unreasonable search and seizure.

Amendment rights. *Coolidge* involved the warrantless seizure of a vehicle parked adjacent to the permanent dwelling place of the owner. The purpose of the seizure was to search for contraband.[7] There would have been no justification for impounding the vehicle in *Coolidge* for safekeeping. See *United States* v. *Squires,* 456 F. 2d 967 (C.A. 2).

In *Cady,* the intoxicated defendant's disabled vehicle was lawfully towed by police order from a bridge abutment to an open lot, because it was a traffic hazard. This Court sustained the lawfulness of the conduct of a police officer who examined the inside of the car, including the trunk, at the lot in search of a service revolver, which was reasonably thought to be present therein. The Court compared the defendant's car to an abandoned vehicle and indicated that the action of the officers in exercising control over it was "sound police procedure." (Slip op., p. 13). *Cady* thus recognizes the responsibility of local police for the cars of those who are in custody and supports the validity of the action taken in this case.

2. Petitioner's claim that his confession was not sufficiently corroborated by other evidence was fully discussed and properly rejected by the court of appeals (Pet. App. A11-A12). As that court pointed out, the requirement of corroboration does not mean that the government must introduce independent evidence on every element of the crime; on the contrary, a confession is admissible if there is extrinsic evidence which corro-

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[7] We note that petitioner does not challenge the conclusion of the court below that there were here no grounds for concluding that the removal of the vehicle and the subsequent inspection were pretexts for searches for contraband (Pet. App. A9).

borates the confession as a whole.[8] There was ample corroboration of petitioner's confession. As stated by the court below (Pet. App. A12): "Indeed, virtually every item of extrinsic evidence tended in one way or another to corroborate Gravitt's substantially complete account of the crime."

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1973.

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[8] Although *Smith* v. *United States*, 348 U.S. 147, 156; *Opper* v. *United States*, 348 U.S. 84, 93; and *United States* v. *Calderon*, 348 U.S. 160, 168, are not entirely unambiguous on this issue, they have been consistently interpreted by the courts of appeals as supporting the conclusion reached below in this case. See *United States* v. *Abigando*, 439 F. 2d 827 (C.A. 5); *United States* v. *Wilson*, 436 F. 2d 122, 124 (C.A. 3), certiorari denied, 402 U.S. 912; *United States* v. *Bukowski*, 435 F. 2d 1094, 1105-1107 (C.A. 7), certiorari denied, 401 U.S. 911; *Mapys* v. *United States*, 409 F. 2d 964, 967 (C.A. 10), certiorari denied, 399 U.S. 932.

In any event, petitioner's contention that there was no extrinsic evidence indicating that the weapons were transported in interstate commerce is incorrect (Pet. 10). The evidence indicated that petitioner had arrived in Florida only hours before he was apprehended at the nightclub. This circumstance corroborated petitioner's confession that the weapons had not been purchased in the State.